

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JASON ANGELO MERRITT,

Defendant and Appellant.

G050940

(Super. Ct. No. 95CF2455)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County,
Sheila F. Hanson, Judge. Affirmed.

Ava R. Stralla, under appointment by the Court of Appeal, for Defendant
and Appellant.

No appearance for Plaintiff and Respondent.

In 1997, appellant was sentenced to 28 years to life in prison after a jury found him and his codefendant guilty of first degree murder with a firearm. After the judgment was affirmed on appeal, the trial court awarded the victim's mother restitution in the amount of \$194,926. Although the parties were not present when the award was issued, the court made clear its restitution order was subject to request for further hearings by the parties. The order was clear and complete, and appellant makes no claim of being unaware of it.

Fifteen years later, in September 2014, appellant moved for a hearing so he could challenge the restitution award for lack of evidentiary support. The trial court denied the motion on various grounds, including lack of jurisdiction and general untimeliness. Appellant appealed, and we appointed counsel to represent him. Appellate counsel did not argue against appellant, but advised this court he could find no issue to argue on appellant's behalf. (*People v. Wende* (1979) 25 Cal.3d 436.) Appellant was given 30 days to file written argument in his own behalf and has submitted a letter brief for our consideration.

In point of fact, the trial court did have jurisdiction to entertain appellant's motion to challenge the restitution order. (Pen. Code, § 1202.4, subd. (f); *People v. Turrin* (2009) 176 Cal.App.4th 1200, 1207.) However, that does not mean appellant's motion was timely. Although the order gave appellant the right to challenge the amount of restitution, he acquiesced to the order for a decade and a half before doing so. The law is well established that a legal right of any sort may be forfeited by failing to exercise it in a timely fashion. (*People v. McCullough* (2013) 56 Cal.4th 589, 593.) The forfeiture rule is “grounded on principles of waiver and estoppel, and is a matter of judicial economy and fairness to opposing parties. [Citations.]’ [Citation.]” (*People v. Garcia* (2010) 185 Cal.App.4th 1203, 1214.) All of these considerations compel a finding appellant forfeited his right to challenge the trial court's restitution order by waiting 15 years to do so.

Moreover, appellant's filing in this court makes clear his primary objection to the restitution order is that he lacks the means to pay it. However, inability to pay is not a proper basis for attacking a restitution order. (Pen. Code, § 1202.4, subd. (g).) While appellant complains about the fact the trial court made him and his codefendant jointly and severally liable for the full amount of the restitution order, that aspect of the order is unassailable given that appellant actively aided and abetted his codefendant in murdering the victim. (*People v. Madrana* (1997) 55 Cal.App.4th 1044, 1051.)

There is, in short, no arguable basis for disturbing the trial court's order denying appellant's motion for a restitution hearing. Even though the trial court was wrong about not having jurisdiction, we conclude appellate counsel was correct in not pursuing this point because there are other valid reasons for denying the motion. (*People v. Zapien* (1993) 4 Cal.4th 929, 976 [“If right upon any theory of the law applicable to the case, (the trial court's ruling) must be sustained regardless of the considerations which may have moved the trial court to its conclusion.”].)

DISPOSITION

The trial court's order denying appellant's motion for a restitution hearing is affirmed.

BEDSWORTH, ACTING P. J.

WE CONCUR:

FYBEL, J.

THOMPSON, J.